Indians, Divorce of. Divorce, to Indians.

Where tribal relations are not severed, the customs of the tribe regarding marriage and divorce hold good. Where the tribal relation has been severed, or where the marriage of Indians are under the state laws, and such facts are made to appear, the said courts would have jurisdiction to grant divorce upon statutory grounds to Indians.

December 29, 1914.

Hon. John A. Bunten,
Supt. Tongue River Agency,
Lamedeer, Montana.

Dear Sir:

This department received your letter of the 7th inst., in due time, wherein you ask instructions concerning the right and authority of the State Courts to grant divorces to Indians, and in reply I give you the following:

The laws of Montana appertaining to divorces do not apply to cases arising among tribal Indians. Indians within a State are not citizens or members of the body politic, but are considered as independent tribes governed by their own laws, customs and usages (Helden v. Joy, 84 U. S. 7 Wall, 211; 21 L. Ed. 523). No state laws have any force over Indians in their tribal relations (Kansas Indians, 72 U. S., 5 Wall, 737, 18 L. Ed. 667). The civil laws of a state do not extend to an Indian country within a State (United States v. Shank, 15 Minn. 369; U. S. v. Payne 4 Dill, 389). An Indian tribe within a state, recognized as such by the United States government, is to be considered as a separate community of people, capable of managing its own affairs, including the domestic relations, and those people belonging to the tribe who are recognized by the customs and laws of the tribe as married persons must be so treated by the courts (Earl v. Wilson, 7 L. R. A. 125 (Minn.). As long as the tribal relation is preserved, the State may not exercise any authority over the domestic laws and customs of these peoples. (21 Cyc, 1147).

Even where the marriage would not satisfy the state law it must still be recognized as valid (26 Cyc, 831). Marriage among Indian tribes is considered by the courts as taking place in a state of nature, and if, according to the usages and customs of the particular tribe, the parties are authorized to dissolve it at pleasure, the right of dissolution will be considered a term of the contract; and either party may take advantage of this term unless it be expressly or impliedly waived by them; or they may, perhaps, acquire such relations to society as will give permanency to the contract and take from them the right to annul it; (Wall v. Williams, 11 Ala. 826). The monographic note to the case of Cyr v. Walker, 35 L. R. A. (N. S.), 795, states the rule, supported by the authorities, as follows:

> "By an established custom among most Indian tribes, marriage is regarded as a relation which may be assumed or dissolved at the pleasure of the parties thereto. No formal contract or ceremony is essential—a mere meeting and cohabitation

> as husband and wife constitute marriage. This relation may, by the same custom, be as easily terminated whenever it becomes tiresome, or when for any reason a change is desired. This can be effected by separation by mutual consent, and the parties are thereafter free to form other marital alliances."

I am not aware of any treaty obligations which would except tribial Indians of the Tongue River Indian Reservation from the general rule above announced. In any event domestic differences arising among tribal Indians residing upon the reservation would have to be adjudicated, if at all, by tribal usages and customs as practised by the Indians themselves or by reference to a federal court.

The foregoing views are to be construed as applying only to cases where the tribal relation existed when the marriage was solemnized and such relation still obtains. In cases where the marriage was under the State Laws and by its civil authorities, or where the tribal relation is severed, and the jurisdictional facts are made to apper, the State courts would undoubtedly have jurisdiction to grant divorces upon statutory grounds to Indians.

Yours very truly,

D. M. KELLY,

Attorney General.